

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ANGIE BERRY

PLAINTIFF

VS.

CIVIL ACTION NO. 3:22-cv-004-TSL-MTP

UNIVERSITY OF MISSISSIPPI
MEDICAL CENTER

DEFENDANT

ORDER

Plaintiff herein, Angie Berry, included in her response to defendant's Rule 12(b)(6) motion to dismiss a "request" to amend her complaint to include additional claims and attached as an exhibit to her motion a proposed amended complaint. Pursuant to this court's Local Rule 7(b), "Any written communication with the court that is intended to be an application for relief or other action by the court must be presented by a motion in the form prescribed by this Rule." A request to amend in a response to a motion to dismiss is not a "motion" and therefore, the request to amend is not properly before the court. The court assumes plaintiff's counsel was aware of the court's local rule; but even if she had been unaware of the rule prior to filing the response, she certainly was not unaware after receiving defendant's reply, which cited the rule as a basis for denying the request to amend. Yet she still did not file a proper motion to amend.

Under the circumstances, the court would be entirely warranted in granting the motion to dismiss outright and simply disregarding plaintiff's request to amend on the basis that it is not properly before the court. The court has given serious consideration to that option. Instead, however, the court will give plaintiff a limited opportunity file a motion to amend in accordance with the requirements of Local Rule 7, failing which the court will rule on the motion to dismiss and disregard and/or deny plaintiff's "request" to amend.

Accordingly, it is ordered that plaintiff shall have three days from entry of this order within which to file a motion to amend, failing which the court will rule on the motion to dismiss and disregard and/or deny plaintiff's "request" to amend.

SO ORDERED this 18th day of April, 2022.

/s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE